



California Fair Political Practices Commission

April 25, 1986

Lillian Lee Port
Assistant District Attorney
County of San Mateo
County Government Center
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. A-86-105

Dear Ms. Port:

This is in response to your letter, dated April 2, 1986, requesting advice on behalf of Kay Dix, a member of the Governing Board of the San Carlos Elementary School District, concerning her duties under the Political Reform Act (the "Act").^{1/} You have stated the material facts as follows.

FACTS

Kay Dix is a member of the Governing Board of the San Carlos Elementary School District. In addition, Mrs. Dix is a paid consultant to the Interdistrict Interaction Committee ("Committee"). The Committee is composed of and funded by all elementary school districts that "feed" into the Sequoia Union High School District. It provides interracial educational and social experiences for elementary school children before they enter the integrated high school system.

The San Carlos Elementary School District is a defendant in a long-standing school desegregation lawsuit entitled Tinsley, et al. v. Palo Alto Unified School District, et al. The proposed settlement of this lawsuit includes a requirement that all of the school districts involved continue to "participate in the Interdistrict Interaction Committee's cooperative efforts." The members of the Governing Board of the San Carlos Elementary School District will soon be deciding whether to accept or reject the proposed settlement agreement.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

QUESTION

Mrs. Dix wishes to know whether she may participate in the decision to accept or reject the proposed settlement agreement.

CONCLUSION

Mrs. Dix may not participate in, or attempt to use her official position to influence, the decision of whether the San Carlos Elementary School District should accept or reject the proposed settlement agreement.

ANALYSIS

The Act prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they have a financial interest. Section 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family. Section 87103.

The Commission, by regulation 2 Cal. Adm. Code Section 18702.1 (copy enclosed) has interpreted Sections 87100 and 87103 as requiring a public official to disqualify him or herself from participating in any decision when:

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision....

2 Cal. Adm. Code Section
18702.1(a)(4).

Since a decision to accept the proposed settlement agreement would guarantee the continued existence of the Committee and presumably Mrs. Dix's employment with the Committee, it is reasonably foreseeable that this decision will affect Mrs. Dix's income by at least \$250. Consequently, this is a governmental decision in which Mrs. Dix has a financial interest. Pursuant to Section 87100, Mrs. Dix is required to disqualify herself from participating in this decision. In addition, Mrs. Dix must not attempt to use her official position to influence this decision. However, Mrs. Dix may speak to the general public or to the press regarding her views

Lillian Lee Port
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on whether the district should support or oppose the proposed settlement agreement. (See, 2 Cal. Adm. Code Section 18700.1(b)(2), copy enclosed.)

If you have any questions concerning this letter, please feel free to call me at (916) 322-5901.

Very truly yours,

A handwritten signature in cursive script, reading "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:JG:plh
Enclosures

James P. Fox, District Attorney



COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063 (415) 363-4666

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APR 3 9 11 AM '86

April 2, 1986

SENT VIA FEDERAL EXPRESS

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

Gentlemen:

We are writing at the request of Kay Dix, a member of the Governing Board of the San Carlos Elementary School District, to discern if a conflict of interest exists under the following fact situation.

There is presently in its final stage of settlement a long-standing school desegregation lawsuit entitled Tinsley, et al. v. Palo Alto Unified School District, et al. The Sequoia Union High School District and the San Carlos Elementary School District are both named defendants. In addition to a plan for desegregating an area of the county, the proposed settlement contains a requirement that all of the school districts involved continue to "participate in the Interdistrict Interaction Committee's cooperative efforts." That Committee is composed of all districts that "feed" into the Sequoia Union High School District. It provides interracial educational and social experiences for elementary school children before they enter the integrated high school system.

The program has been in effect since 1979, staffed some years by teachers, some years by volunteers. For the past two years, Mrs. Dix has served as a paid consultant to the Committee under a contract with the Sequoia Union High School District.

Before she participates in any discussion regarding accepting or rejecting the proposed settlement agreement, Mrs. Dix would like some direction about the potential for conflict in the fact that she is a school trustee on a school board that is required to vote on a desegregation lawsuit settlement agreement that also requires the defendants to continue to participate in the efforts of a committee to which she is a paid consultant.

April 2, 1986


We are unable to respond to Mrs. Dix' question since we have been asked to withdraw from all connection with the Tinsley lawsuit, having represented multiple defendants at one time.

We are enclosing herewith our office opinion dated August 6, 1984 concerning the legality of the contract entered into between Mrs. Dix and the Sequoia Union High School District.

Since time is of the essence, a prompt reply would be appreciated.

Very truly yours,

JAMES P. FOX
District Attorney

By 

Lillian Lee Port
Assistant District Attorney

LLP:gnd
Enclosure

James P. Fox, District Attorney



COUNTY OF SAN MATEO

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(415) 363-4666

August 6, 1984

Mrs. Marion McDowell
Deputy Superintendent,
Personnel Services
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94063

Re: Contract with Kay Dix for Interaction Program

Dear Marion:

This is in response to your letter regarding the legality of a contract entered into between the Sequoia Union High School District and Mrs. Kay Dix, a member of the Governing Board of the San Carlos School District, a Sequoia Union High School District feeder district. Under that contract, Mrs. Dix would supervise and coordinate the Interaction Program which brings together elementary students from all eight of the feeder districts through a variety of activities. It is our understanding that in previous years, the Sequoia District absorbed the cost for the program; that this year the high school district is not able to fund the entire project; that in order to continue with the project, the elementary districts have agreed to contribute varying amounts towards the supplies and transportation costs inherent in the program.

It is our opinion that while such a contract would violate Education Code Section 35233 which provides that "[N]o member of the governing board of any school district shall be interested in any contract made by the board of which he is a member," Section 35234 provides an exception which would allow her to be a contractor under certain circumstances. It states "[N]o contract or other transaction entered into by the governing board of any school district is void or voidable under the provisions of Section 35233, nor shall any member of such board be disqualified or be deemed guilty of misconduct in office under certain provisions if the circumstances specified in the following subdivisions exist: (a) the fact of such interest is disclosed or known to the governing board and noted in the minutes and the governing board thereafter authorizes, approves or ratifies the

Mrs. Marion McDowell
Sequoia Union High School District
August 6, 1984
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Re: Contract with Kay Dix For Interaction Program

contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such interested member or members, and (b) the contract or transaction is just and reasonable as to the school district at the time it is authorized or approved." Section 35235 provides the exemptions in 35234 are not applicable where the contract or transaction is between the school district and a member of the governing board of that district. Since Mrs. Dix is not a member of the governing board with whom she will contract, to wit, the Sequoia Union High School District Board, the exception to the exception does not apply.


We would, therefore, suggest that the San Carlos School District Board schedule a Board meeting to take official action on its contribution to Sequoia for the Interaction Project and at that meeting, Mrs. Dix disclose her financial interest in the action, and refrain from voting on the motion. We believe such action is also required by the Fair Political Practices Act, Government Code Sections 87100, etc., Regulation Title II, Section 18702.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

JAMES P. FOX, DISTRICT ATTORNEY

BY


LILLIAN LEE PORT
ASSISTANT DISTRICT ATTORNEY

LLP:adp